



January 18, 2012

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Honorable J. Frederick Motz  
United States District Judge  
USDC - District of Maryland  
101 West Lombard Street  
Baltimore, Maryland 21201

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Re: MDL 1586, Franklin Templeton Sub-Track

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Dear Judge Motz:

As Your Honor may recall, both the Franklin Investor Class Action and the Franklin Fund Derivative Action have been resolved with dismissals. In an effort to "clean up" this matter with finality for Franklin, we recently contacted Counsel for Plaintiff in the Parent Derivative Action, offering a Stipulation of Dismissal with Prejudice (identical to the one recently signed and "So Ordered" by Your Honor in the Fund Derivative Action). We had not heard from Counsel for Plaintiff in the Parent Derivative Action for over seven years.<sup>1</sup>

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Upon making contact with Counsel last week, I raised with them the fact that we can find no record at Franklin that the named plaintiff, one Hedi Hertz, is, in fact, a shareholder of Franklin Resources, Inc., the parent company on whose behalf she purports to sue. Furthermore, I called to the attention of Counsel the fact that Your Honor had authored an Opinion, *Chasen v. Whiston* (MDL-15863, Janus Subtrack, January 3, 2007), which makes abundantly clear that failure to make pre-suit demand in these parent derivative cases is fatal. No pre-suit demand was made in this case, and the allegations of "futility" are "boiler-plate" of a type repeatedly rejected by Your Honor and by other Courts.

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<sup>1</sup> On September 30, 2004, we had signed a Stay and Tolling Agreement with them. To the best of our knowledge, they did not participate in the MDL beyond simply signing the Stay and Tolling Agreement. The Stay and Tolling Agreement has expired.

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We will, if necessary, move to dismiss or for summary judgment on these two issues; however, doing so would, we believe, impose an unnecessary burden of time and expense both on the Court and on Franklin. Accordingly, may I respectfully suggest a telephone conference with the Court and Counsel (Mr. Lifshitz) in which Your Honor might explore this situation first-hand and perhaps obviate inefficiency?

If the answer to my inquiry is in the affirmative, I will schedule the call through Mr. Isbister, Liaison Counsel, at the earliest available time convenient for the Court. I will be in Cuba with the Metropolitan Museum of Art in the first two weeks of February and would be grateful to get this done (or at least set in motion) before I depart.

Respectfully,

A handwritten signature in black ink, reading "Dan Pollack", with a long horizontal line extending to the left and a short horizontal line extending to the right.

Daniel A. Pollack  
Counsel for Franklin Templeton Defendants

cc: Joshua Lifshitz, Esq.  
Counsel for Plaintiff in the  
Parent Derivative Action